IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:	
DENISE PECK,	2 CA-CV 2007-0043
Petitioner/Appellee,	DEPARTMENT B
and	MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil
DAVID WATERMAN,	Appellate Procedure
Respondent/Appellant.	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D-085588

Honorable Karen S. Adam, Judge Pro Tempore

AFFIRMED IN PART
REVERSED AND REMANDED IN PART

Michael L. Price, P.C.
By Michael L. Price
Tucson
Attorney for Petitioner/Appellee

Law Office of Deborah Patricia Hansen
By Deborah P. Hansen
Tucson
Attorney for Respondent/Appellant

and

Law Office of David M. Waterman
By David M. Waterman Tucson
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Appellant David Waterman appeals from the trial court's most recent ruling and order relating to amounts Waterman owes to appellee Denise Peck pursuant to their divorce decree. In a contempt proceeding initiated by Peck, the court ordered Waterman to pay Peck $22,949.64 for taxable spousal maintenance arrearages and $95,042.29 for nontaxable spousal maintenance obligations. Those arrearages and obligations included amounts owed to creditors and to Peck's pension plan. On appeal, Waterman contends the trial court erred in awarding property in a contempt proceeding, in failing to set forth its findings of fact and conclusions of law, and in calculating the spousal maintenance arrearages. Waterman also asserts the trial court erred in failing to determine whether Peck was entitled to indemnification for debts to two creditors and her pension plan, in modifying the divorce decree, and in finding interest began to accrue on the three debts from the time of the decree. For the following reasons, we affirm in most respects but reverse and remand for the trial court to correct a computation error.

¶2 In November of 1992, the trial court entered a decree dissolving the marriage between Waterman and Peck. The decree ordered Waterman to pay Peck $210,000 in spousal support over a period of seven years and to pay certain debts, including amounts

owed to Peck's pension plan. Since 1992, Peck has filed numerous pleadings attempting to enforce the terms of the decree. As the result of one of those efforts, the trial court in 1995 entered judgment against Waterman, reaffirming terms set out in the decree and ordering a receiver for Waterman's law practice to pay the debts and obligations assigned him.

¶3 In 2000, Peck again sought to enforce the terms of the decree by filing a petition for an order to show cause why Waterman should not be held in contempt of court for being in arrears in paying spousal maintenance, failing to pay certain debts, and failing to pay Peck's attorney fees as previously ordered. The trial court granted in part motions for partial summary judgment filed by Waterman, concluding the limitations period for enforcing the 1992 judgment had elapsed. As a result, the court ruled Waterman was no longer obligated to pay two creditors and Peck's pension fund and did not owe interest on $40,000 in past-due spousal maintenance from September 1994 to December 1995.

¶4 Peck appealed the trial court's decision, and this court held that the trial court's minute entry and order in 1995 constituted a judgment in and of itself and that Peck's request for an order to show cause was timely as to that judgment. *Peck v. Waterman (Peck I)*, No. 2 CA-CV 2003-0062, ¶ 9 (memorandum decision filed June 30, 2005). Therefore, we ruled, the trial court had erred in granting Waterman's motion for partial summary judgment regarding his failure to pay the debts and make the pension-plan contributions. *Id.* For the same reason, we held the trial court had erred in finding Waterman did not owe Peck interest on a $40,000 payment Waterman made for past-due

spousal maintenance accrued from September 1994 to December 1995. *Id.* ¶ 15. We remanded the case to the trial court to determine Waterman's obligation for the debts and pension-plan contributions, in addition to "whether Peck is entitled to interest on [past spousal maintenance] installments from September 1994 to December 1995 and, if so, the amount that remains due." *Id.* ¶¶ 10, 15.

¶5 On remand, the trial court interpreted our decision as instructing it to decide only "the amount owed on the previously ordered judgments," stating that Waterman was incorrect in claiming our decision called into question the validity of the previous judgments. The court ordered Waterman to pay $95,042.29 for nontaxable spousal maintenance obligations, including, among others, debts owed to Bank of America, Citibank, and Peck's pension plan and $22,949.64 for arrearages in taxable spousal maintenance.

¶6 On appeal from that ruling, Waterman notes an error in the court's calculation of the debt owed to Bank of America. The trial court showed the sum of the debt ($46,792.23) and interest ($388.96) as totaling $58,627.25. Correctly calculated, the sum should be $47,181.19. We remand this to the trial court to modify its order, either to rectify its apparent mathematical error or explain how it came to the $58,627.25 figure.

¶7 Waterman further argues the trial court's findings of fact and conclusions of law were insufficient to support its ruling because the court did not cite to any specific case law or evidence nor did it show how it had performed its calculations. But in each case Waterman has cited in support of his contention that he was entitled to such specific

findings, the appellant had made a proper request for findings and conclusions pursuant to Rule 52(a), Ariz. R. Civ. P. *See Kelsey v. Kelsey*, 186 Ariz. 49, 50-51, 918 P.2d 1067, 1068-69 (App. 1996) (when Rule 52(a) is invoked, trial court must show basis for decision to justify its conclusion); *see also Miller v. Bd. of Supervisors*, 175 Ariz. 296, 299, 855 P.2d 1357, 1360 (1993) (same). Waterman made no similar request for findings of fact and conclusions of law. Rule 52(a) provides: "In all actions tried upon the facts without a jury or with an advisory jury, the court, *if requested before trial*, shall find the facts specially and state separately its conclusions of law thereon . . . ." (Emphasis added.) Without having made a request for findings and conclusions under Rule 52(a) here, Waterman cannot now fault the trial court for failing to provide them.

¶8 Waterman next contends the trial court, by ordering him to indemnify Peck for the debts owed to Bank of America and Citibank and to make payments to Peck's pension plan, "chang[ed] the terms of the decree so that Peck had essentially received a new right to property which until February 2007 she was not entitled." Waterman also maintains the trial court lacked subject matter jurisdiction to modify the decree in a contempt proceeding. With regard to these debts, however, the original decree of dissolution stated, "[Waterman] shall assume sole responsibility for payment of and he shall pay all of the [enumerated debts] and he shall indemnify, defend and hold [Peck] harmless therefrom." The trial court did not change the terms of the decree; Peck's property right to the value of the three debts

had already been established in 1992. Therefore, Waterman's argument that the trial court lacked subject matter jurisdiction fails.

¶9 For the same reason, Waterman's contention that the trial court should have determined whether Peck was entitled to indemnification for the three debts fails. Waterman maintains this court in *Peck I* ordered the trial court to "determine the substantive question of whether Peck was entitled to 'indemnification' for the debts" and claims the trial court's failure to consider the issue was error. However, we did not direct the trial court to determine a substantive issue that was resolved fifteen years ago in the original decree of dissolution but, rather, ruled that the trial court had erred in finding the collection of debts was time barred by the statute of limitations. *Peck I*, No. 2 CA-CV 2003-0062, ¶ 10.

¶10 Waterman argues Peck must prove she is entitled to indemnification for amounts she has paid on the debts and that the trial court therefore erred in ordering him to indemnify her on the record before it. Specifically, Waterman complains Peck has made no showing that she has paid the debts for which she seeks indemnification. But Waterman has not cited any relevant legal authority to support his contention that Peck was required to make any such showing.[1] On appeal, it is Waterman's burden to establish the trial court

[1]Waterman cites two cases in support of his argument that Peck was not entitled to indemnification, but neither decision applies here because, in this case, no party has filed a motion for relief from the judgment under Rule 60(c), Ariz. R. Civ. P. *See In re Marriage of Breitbart-Napp*, 216 Ariz. 74, n.5, 163 P.3d 1024, 1032 n.5 (App. 2007); *Lawwill v. Lawwill*, 21 Ariz. App. 75, 78, 515 P.2d 900, 903 (1973).

erred. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief must contain argument with citation to authority).

¶11 Waterman also argues the trial court's ruling constituted "an impermissible modification of the property allocation embodied in the decree." He claims that, regardless of whether Peck was entitled to indemnification or modification, interest should not accrue on the debts owed from the date of the decree. Because he did not raise these issues below, however, we need not consider them on appeal. *See In re Estates of Spear*, 173 Ariz. 565, 567, 845 P.2d 491, 493 (App. 1992) ("[U]nless an issue not raised in the trial court is one of general statewide significance, an appellate court will not consider it for the first time on appeal.").

¶12 Waterman next contends the trial court erred in ruling he owed Peck $22,949.64 in spousal maintenance arrearages. He asks this court to "approve the total figure of $18,845.04" instead but does not provide a basis for his calculation of this figure.[2] Waterman has failed to lucidly explain how the trial court allegedly erred, and he has not cited any portions of the record in support of his argument. *See* Ariz. R. Civ. App. P. 13(a)(6). Therefore, we need not consider this claim.

[2]In the same paragraph that he requests the court adopt his figure of $18,845.04, Waterman asserts that the spousal maintenance principal due at the time of the trial court's ruling should have been $7,548.23 and the interest due at that time was $5,535.35, for a total of $13,083.58. He does not explain why this figure does not match the figure he is now requesting on appeal.

¶13 For the foregoing reasons, we affirm the trial court's ruling in part and reverse and remand only as to the apparent miscalculation of the sum of the Bank of America debt. Peck asks us to award her the attorney fees she has incurred defending this appeal pursuant to A.R.S. § 25-324(A), which allows us to award fees in a dissolution case only "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." Although we question the reasonableness of Waterman's position on most of the arguments he raised on appeal, Peck has not provided us any relevant information with which to consider the financial resources of the parties. We therefore lack an adequate basis to award fees under § 25-324(A) and, in our discretion, decline to do so. *See Leathers v. Leathers*, 216 Ariz. 374, ¶ 22, 166 P.3d 929, 934 (App. 2007) (appellate court must examine both financial resources and reasonableness of positions under § 25-324(A)).

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge